



BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAII

In The Matter Of The Application Of The ) DOCKET NO. SP08-402  
)  
DEPARTMENT OF ENVIRONMENTAL ) FINDINGS OF FACT,  
MANAGEMENT, COUNTY OF MAUI ) CONCLUSIONS OF LAW, AND  
) DECISION AND ORDER  
For A State Special Use Permit For An ) APPROVING THE  
Approximately 14.615-Acre Portion Of The ) RECOMMENDATION OF THE  
Existing 29.05-Acre Hāna Landfill And An ) COUNTY OF MAUI PLANNING  
Approximately 5.39-Acre Encroachment ) COMMISSION TO APPROVE THE  
Area Situated Within The State Land Use ) STATE SPECIAL USE PERMIT  
Agricultural District At Hāna, Maui, ) APPLICATION  
Hawai'i, Tax Map Key: 1-3-06: Por. 7 And )  
Por. 12 )  
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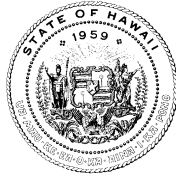
FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER  
APPROVING THE RECOMMENDATION OF THE COUNTY OF MAUI PLANNING  
COMMISSION TO APPROVE THE STATE SPECIAL USE PERMIT APPLICATION

THIS IS TO CERTIFY THAT THIS IS A TRUE AND CORRECT  
COPY OF THE DOCUMENT ON FILE IN THE OFFICE OF THE  
STATE LAND USE COMMISSION, HONOLULU, HAWAII.

9/1/2009

BY

Executive Officer



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COMMISSION TO APPROVE THE STATE SPECIAL USE PERMIT APPLICATION

The Land Use Commission (“LUC”), having examined the complete record of the County of Maui Planning Commission (“Planning Commission”) proceedings on the State Special Use Permit Application (“Application”) filed by the County of Maui Department of Public Works and Environmental Management

("DPWEM"), Solid Waste Division ("Applicant")<sup>1</sup>, for an approximately 14.615-acre portion of the existing 29.05-acre Hāna Landfill and an approximately 5.39-acre encroachment area, identified as Tax Map Key ("TMK"): 1-3-06: por. 7 and por. 12, situated within the State Land Use Agricultural District at Hāna, Maui, Hawai`i, and upon consideration of the matters discussed therein, at its meeting on July 16, 2009, in Honolulu, Hawai`i, hereby makes the following findings of fact, conclusions of law, and decision and order:

### FINDINGS OF FACT

#### PROCEDURAL MATTERS

1. On June 12, 2007, the Applicant filed the Application with the County of Maui Department of Planning ("DP"), pursuant to section 205-6, Hawai`i Revised Statutes ("HRS"), and sections 15-15-95 and 15-15-96, Hawai`i Administrative Rules ("HAR").<sup>2</sup>

2. The Applicant sought to include an approximately 14.615-acre portion of the existing 29.05-acre Hāna Landfill and an approximately 5.39-acre encroachment area, identified as TMK: 1-3-06: por. 7 and por. 12 ("Property"), under a

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<sup>1</sup> On July 1, 2007, the DPWEM split into the Department of Public Works and the Department of Environmental Management ("DEM"). The Solid Waste Division was placed within the DEM, the Applicant herein.

<sup>2</sup> The Applicant concurrently filed applications for a Special Management Area ("SMA") Use Permit and a County Special Use Permit.

State Special Use Permit as an “unusual and reasonable use” situated within the State Land Use Agricultural District.

3. On July 22, 2008, the County of Maui Planning Commission (“Planning Commission”) conducted a hearing on the Application.<sup>3</sup> At the hearing, the Planning Commission heard public testimony from three individuals. After due deliberation, the Planning Commission recommended approval of the Application to the LUC.

4. On September 26, 2008, the LUC received a copy of the decision and a portion of the record of the Planning Commission’s proceedings on the Application. On January 27, 2009, the LUC received additional documents to the record. On February 2, 2009, the LUC received the remaining portion of the record.

5. On February 19, 2009, the LUC met in Kahului, Maui, Hawai`i, to consider the Application. Michael Hopper, Esq.; Cheryl Okuma; Tracy Takamine; and Mich Hirano appeared on behalf of the Applicant. Paul Fasi was also present on behalf of the DP. Bryan C. Yee, Esq., and Abe Mitsuda entered appearances on behalf of the State Office of Planning (“OP”).

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<sup>3</sup> The Hāna Advisory Committee (“HAC”), an advisory committee that makes recommendations to the Planning Commission, held hearings on the Application, as well as the Applicant’s request for an SMA Use Permit and County Special Use Permit, on February 21 and May 5, 2008. On May 5, 2008, the HAC recommended approval of the Application to the Planning Commission subject to the 14 conditions recommended by the DP and six additional conditions. The HAC also recommended approval of the County Special Use Permit request subject to the identical 20 conditions. The HAC deferred action on the Applicant’s request for the SMA Use Permit until such time the State Special Use Permit and County Special Use Permit were obtained.

At the meeting, the Applicant requested that proposed Condition Number 7 be amended to clarify that the Applicant be required to begin construction of the landfill stormwater drainage retention basin within three years from the issuance of the LUC's decision and order instead of requiring that the Applicant begin construction of the landfill expansion within the specified time period. The Applicant noted that the requested modification to the condition would accurately reflect what the Applicant will, in fact, be doing. The Applicant also requested that proposed Condition Number 19 be amended to either clarify that the Applicant's recycling program may include but not be limited to glass, aluminum, plastics, batteries, newspapers, cardboard, appliances, and oil instead of mandating that said program include the aforementioned materials or clarify that such mandate be contingent upon its practicability. The Applicant pointed out that without the requested modification to the condition, the Applicant may not be able to comply with the condition as compliance would be dependent upon factors that are beyond the control of the Applicant.

Upon additional discussion on the issue of the LUC's authority regarding special use permits under section 205-6, HRS, the Applicant requested that if the LUC was inclined to retain proposed Condition Number 19 as currently worded, that the matter instead be remanded to the Planning Commission to allow them to clarify their intent with respect to said condition.

Thereafter, a motion was made and seconded to remand the Application to the Planning Commission for further proceedings as provided for in subsection 15-15-96(a), HAR. This motion was subsequently amended and seconded to remand the Application to the Planning Commission to specifically review proposed Condition Numbers 7 and 19 and to confirm whether the modifications requested by the Applicant to said conditions reflect the intent of the Planning Commission with respect to the Application and are supported by the record as established by the HAC. There being a vote tally of 7 ayes and 2 absent, the amended motion passed.

6. On March 24, 2009, at the hearing on the remanded Application, the Planning Commission confirmed that the modifications requested by the Applicant to Condition Numbers 7 and 19 reflected the intent of the Planning Commission and voted to adopt its staff's Proposed Findings of Fact, Conclusions of Law; Decision and Order as its Findings of Fact, Conclusions of Law and Decision and Order with the exception that in Condition Number 19, the word "thereafter" be amended to "after." Based on the action of the Planning Commission, Condition Numbers 7 and 19 read as follows:

7. That the applicant shall begin construction of the landfill storm water drainage retention basin within three (3) years

from issuance of the Land Use Commission's decision and order.<sup>4</sup>

19. That a recycling program begin immediately after permits are issued and/or the Department of Health grants approval. The recycling program may consider, but not be limited to glass, aluminum, plastics, batteries, newspapers, cardboard, appliances and oil.

7. On June 5, 2009, the LUC received a copy of the decision and a portion of the record of the Planning Commission's remand hearing on the Application. On June 19, 2009, the LUC received the remaining portion of the record.

8. On July 16, 2009, the LUC met in Honolulu, Hawai'i, to consider the matter. Tracy Takamine appeared on behalf of the Applicant. Bryan C. Yee, Esq., and Abe Mitsuda were also present at the meeting on behalf of the OP. At the meeting, Mr. Takamine explained the need to obtain the State Special Use Permit for the Hāna Landfill. The OP had no opposition to the Application. Following further discussion, a motion was made and seconded to approve the recommendation of the Planning Commission to approve the Application. Upon further discussion, the motion was clarified and seconded to approve the Application subject to the 20 conditions recommended for the Application as reflected in the record, with (i) the following amendments to Condition Numbers 5, 7, 12, 15, and 19 to read as follows:

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<sup>4</sup> Condition Number 7, as it originally appeared before the HAC and the Planning Commission, included a second sentence, which read "Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations."

5. That the Applicant shall timely provide without any prior notice, annual reports to the Land Use Commission and the Department in connection with the status of the Project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.
7. That the Applicant shall begin construction of the landfill storm water drainage retention basin within three (3) years from issuance of the Land Use Commission's decision and order. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.
12. That the Applicant shall utilize non-drinking water, to the extent possible, for grading, dust control, and irrigation of the landfill.
15. That the Applicant inform the Department of Public Works of HAC's safety concerns, and further that the Applicant shall make its best effort to insure daily operations are conducted in a safe manner. The Applicant shall undertake an engineering slope and soil stability analysis prior to construction within the three (3) year period.
19. That a recycling program begin immediately after permits are issued and/or the Department of Health grants approval. The recycling program may consider, but not be limited to, glass, aluminum, plastics, batteries, newspapers, cardboard, appliances, and oil.

and (ii) the following additional Condition Numbers 21, 22, and 23 to read as follows:

21. That the Applicant shall periodically monitor the Property for the presence of miconia plants and eradicate any individuals found while they are still immature.
22. That the Applicant shall file a boundary interpretation request with the LUC staff to determine the location of the Agricultural and Conservation District boundary relative to Waste Area No. 2, as identified on the survey map dated September 8, 2007, within 30



days following the issuance of the Decision and Order granting the Application. The boundary interpretation request shall be accompanied by a metes and bounds survey prepared by a licensed professional land surveyor.

23. That the Applicant shall be prohibited from utilizing any Conservation District lands that may be present in Waste Area No. 2, as determined by the boundary interpretation prepared by the LUC staff, for the purposes of municipal solid waste disposal in connection with the Hāna Landfill.

There being a vote tally of 5 ayes and 4 absent, the motion, as clarified, passed.

#### DESCRIPTION OF THE PROPERTY

9. The Hāna Landfill is located at Hāna, Maui, Hawai`i, and is identified as TMK: 1-3-06: por. 7 and por. 12. The landfill currently occupies a total land area of approximately 34.45 acres of land, which includes the original approximately 29.05-acre footprint of the landfill and an approximately 5.39-acre encroachment area.

10. The 5.39-acre encroachment area (TMK: 1-3-06: por. 7) is located within the State Land Use Agricultural District. While it is believed that the 14.615 acres of the existing waste area of the Hāna Landfill (TMK: 1-3-06: por. 12) are also designated within the State Land Use Agricultural District, a portion may be designated within the State Land Use Conservation District based on the Applicant's revised survey dated January 16, 2009.<sup>5</sup> It is the intention of the Applicant that the requested

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<sup>5</sup> This revised survey is not part of the record before the LUC.

State Special Use Permit would apply only to the portion of the existing landfill and the encroachment area within the State Land Use Agricultural District.

11. The Hāna Community Plan designates TMK: 1-3-06: 7 as Agricultural/Light Industrial and TMK: 1-3-06: 12 as Interim.

12. The County of Maui zones TMK: 1-3-06: 7 as Agricultural/Interim and TMK: 1-3-06: 12 as Interim.

### BACKGROUND OF THE HĀNA LANDFILL

13. In 1969, the State Board of Land and Natural Resources (“BLNR”) approved a right-of-entry in favor of the County of Maui to utilize an approximately 29.05-acre portion of TMK: 1-3-06: 12 within the State Land Use Agricultural and Conservation Districts, together with a 20-foot-wide road easement, for a garbage dump site. This site, known today as the Hāna Landfill, has served as the single disposal and recycling facility for the districts of Ke`anae, Nāhiku, Hāna, Kīpahulu, and Kaupō.

14. In 1984, the BLNR approved a request for issuance of an Executive Order placing control and management of that portion of TMK: 1-3-06: 12 to the County of Maui. The remaining portion of parcel 12 is a strip of land, ranging in width from 300 feet to 350 feet between the eastern boundary of the landfill site and the Hāna coastline. This State-owned portion of parcel 12 is in the State Land Use Conservation District and is excluded from the right-of-entry and subsequent Executive Order.

15. Landfill operations in the late 1980s and early 1990s have resulted in a westward encroachment onto a portion of the adjacent State-owned land, identified as TMK: 1-3-06: 7. This approximately 5.39-acre encroachment area, which was not included in the right-of-entry approved in 1969, is used for disposal of residential and commercial waste. The Applicant has initiated land acquisition proceedings with the State Department of Land and Natural Resources (“DLNR”) to integrate an approximately 45.14-acre area, including the landfill encroachment, buffer zone, and environmental monitoring areas, with the existing landfill site.

16. The landfill facility includes three operational components: the waste collection areas, various environmental monitoring stations, and the landfill office.

17. The active or open waste receiving area, which is typically limited to a 50-foot by 100-foot land area, is located on the western portion of parcel 12 and includes the area of encroachment on parcel 7. The site receives an average of approximately four tons of waste per day. The landfill has an estimated capacity of 290,400 cubic yards and will be able to accommodate waste disposal to 2050.

18. Depending on site conditions and daily waste volumes received, the size of the municipal solid waste active area may be reduced by landfill staff in an effort to minimize windblown litter, infiltration of rainfall, control odors, vectors, and other nuisances.

19. The scrap metal storage area is located in the central portion of the landfill site and is approximately 1.1 acres in size. The area contains washers, dryers, refrigerators, water heaters, and automobiles. The scrap metal is being stored onsite to eventually be transported to an off-island processing facility. Biodegradable materials are collected in a 3.5-acre portion of land on the eastern end of the landfill. Tree clippings, leaves, and stumps are separated and stored for decomposition.

20. The landfill's recycling facility is located east of the operator's shelter and encompasses approximately 10,000 square feet. Receptacles are located to accept glass and used motor oil. Recycled materials are periodically removed from the site and recycled by the County of Maui.

21. Hāna Landfill includes three groundwater monitoring wells; two are located on parcel 12 and the other is on parcel 7. The Applicant utilizes the wells in completing semi-annual groundwater monitoring reports. Four methane gas probes are located beyond the perimeters of the landfill and are designed to monitor methane concentrations along the landfill perimeters. Three of the methane gas probes are located on parcel 7, while the other probe is located on parcel 12. The Applicant completes monitoring of methane concentrations on a quarterly basis.

22. The landfill office is located in the central portion of the landfill, housing the two full-time staff members consisting of an equipment operator and a landfill attendant.

#### DESCRIPTION OF THE PROPOSED USE

23. The Applicant seeks a State Special Use Permit for an approximately 14.615-acre portion of the existing 29.05-acre Hana Landfill and an approximately 5.39-acre encroachment area. The Applicant intends to acquire land from the State of Hawai'i to consolidate approximately 45.14 acres (including the 5.39-acre encroachment area) into the landfill site. The DLNR previously authorized the Applicant to file the Application.

24. The proposed 39.75-acre area (minus the encroachment area), which will contain a 100' x 100' runoff detention basin, buffer zone, and environmental monitoring facilities, is not part of the Application. Pursuant to Title 40 of the Code of Federal Regulations (which sets forth the minimum national criteria under the Resource Conservation and Recovery Act and the Clean Water Act), all municipal solid waste landfill units that receive waste on or after October 9, 1993, are required to meet the provision of Title 40. In the case of the Hāna Landfill, this includes environmental monitoring stations (groundwater and methane gas) and the new detention basin to capture onsite runoff.

25. Following the realignment of the boundaries, the total acreage of the Hāna Landfill will consist of approximately 74.19 acres of land and will include the active waste area, the encroachment area, the environmental monitoring areas, the detention basin, and the buffer zone.

#### NEED FOR THE PROPOSED USE

26. The proposed action is required to correct the encroachment of the operations of the Hāna Landfill and to entitle the landfill grounds under a State Special Use Permit pursuant to chapter 205, HRS.

#### IMPACTS UPON THE RESOURCES OF THE AREA

##### Agricultural Resources

27. The soils on the Property are located within the Hāna-Maka`alae-Kailua association based on the United States Department of Agriculture Soil Conservation Service classification system. The area contains moderately deep, gently sloping to steep, well-drained soils. The texture ranges from moderately fine to fine subsoils. A`a lava flows underlie the Property, which make the land unsuitable for agricultural cultivation. This soil type is often used for water supply, wildlife habitat, and recreation.

## Archaeological and Historical Resources

28. Xamanek Researches prepared an archaeological assessment of the Property in September 2003. No significant material cultural remains were identified during inspection of the site. Moreover, no significant above ground structural remains were observed in the adjacent area. The rocky surface of the surrounding a`a terrain would seem to indicate that it was not substantially used by precontact Hawaiians or during the post-contact sugar and ranch eras. Interviews with local residents also indicated that there are no significant cultural or religious activities that will be adversely impacted by the proposed action. It is likely that the extent of landfill activities over the years have eliminated any evidence of former land use on the Property.

29. Based on the findings of the archaeological assessment, no further work or mitigation is recommended. The DLNR, State Historic Preservation Division, determined that there will be “no historical properties affected” by the proposed action.

## Flora and Faunal Resources

30. Robert Hobdy conducted a flora and fauna survey of the Property in November 2006. The subject area is vegetated with lowland, windward, non-native forest except for cleared portions around the existing landfill. Hobdy classified the area into three categories: forest, landscape, and landfill. In the forest area, the undeveloped portions were disturbed, wet, and characterized by a lowland forest dominated by non-

native plant species. The landscaped area is populated by ornamental plants that have been placed around the entrance, the load tally office, and along the road. The landfill area is largely barren ground and covered trash areas. Common weeds are widespread in the recently disturbed ground. No federally listed threatened or endangered species were found on the Property, nor were any found that are candidates for such status. No special habitats were found. As a result, the proposed action is not anticipated to have an adverse impact on floral resources.

31. The mammals observed during the survey included mongoose and a cat. Dogs were heard barking but were not seen. While not seen, it is expected that rats and mice are present on the Property. An evening survey of the area did not evidence the presence of the native Hawaiian Hoary Bat. The survey reflected the presence of nine introduced species of birds, one indigenous seabird species, and one migratory bird species. The Property is not expected to support Hawai'i's native forest birds because of the disturbed nature of the forest and the presence of mosquito borne avian diseases that affect them. With respect to invertebrates, the Blackburn's Sphinx Moth (or its larvae), which is on the federal list of endangered species, and its host plants, either native or non-native, were not observed.

32. No native forest birds occur anywhere in the vicinity of the Property. All of the other bird species are widespread and common and of no particular environmental concern. There were no federally endangered or threatened



species encountered during the survey and no special habitats were identified. The proposed action is not anticipated to have an adverse impact on faunal resources.

#### Groundwater Resources

33. The basal groundwater underneath the landfill occurs in the Honomaunu formations. The aquifer beneath the landfill is part of the Kawaipapa System of the Hāna sector. The Applicant undertakes groundwater monitoring and testing on a semi-annual basis to ensure that landfill operations do not result in adverse impacts to downstream properties. URS Corporation sampled groundwater from the three monitoring wells in January 2007. All monitoring parameter concentrations were within the statistical control limits established for each well. There were no visual signs observed that were indicative of a release from the landfill to the groundwater.

#### Recreational Resources

34. Major recreational resources in the Hāna region include the County-maintained Hana Ball Park, Hāna Bay Beach Park in Hāna Town and Koki Beach Park near Hāmoa. The State maintains the Wai`ānapanapa State Park located approximately 1.5 miles north of the Property, and the National Park Service maintains the `Ohe`o Gulch recreational area, part of the larger Haleakalā National Park. The proposed action is not anticipated to adversely impact these resources. Portions of the Pi`ilani Trail, also known as the King's Highway, traverse the shoreline area fronting the Property to the east. The trail is not within the existing boundaries of the landfill

nor is it located in the encroachment area. The trail is not affected by the daily operations of the landfill.

### Coastal Resources

35. The Property is located north of Hāna Bay. The remaining portion of TMK: 1-3-06: 12, between the landfill and the shoreline, is a conservation buffer. The proposed drainage improvements, in the form of a 100' x 100' runoff detention basin, are designed to collect and contain runoff from the active landfill area to provide appropriate storm water management and prevent impacts to adjacent properties and coastal resources. In addition, no herbicides or pesticides are used in conjunction with the landfill, so no impacts are anticipated from such chemicals on marine resources.

### ENVIRONMENTAL QUALITY

#### Air Quality and Noise

36. Air quality in the area is impacted by dust generated from the ongoing deposits of solid waste as well as odors generated by decomposing refuse material. Refuse deposits are covered daily with earthen material to mitigate these odors. Short-term construction-related impacts from the grading of the detention basin will include dust and other air pollutant emissions. The Applicant plans to utilize Best Management Practices (“BMPs”) during grading activities to mitigate the potential for adverse impacts to air quality. In light of the location and current operating standards of the landfill, the temporary effects from construction activities of the detention basin

are not anticipated to be significant. The distance of the landfill from the nearest residence is also anticipated to minimize the impact of dust generated by soil cover in the long term. In addition, methane gas from landfill operations has not been detected based on regular monitoring by the Applicant.

37. Ambient noise in the area is primarily attributed to the daily operations associated with landfill activities, such as the use of trucks and bulldozers for spreading and covering waste material. BMPs are also planned to be used to mitigate impacts to ambient noise levels. Both the location and the operating standards of the landfill are expected to minimize the short and long-term impacts to surrounding properties.

#### Water Quality

38. There are no streams or wetlands located in the vicinity of the landfill. Kawaipapa Stream is located approximately 1,500 feet to the south and west of the Property. The *Hawaii Stream Assessment, a Preliminary Appraisal of Hawaii's Stream Resources*, compiled by the DLNR-CWRM, classifies Kawaipapa Stream as "interrupted," flowing year-round in upper portions and intermittently at lower elevations. Kawaipapa Stream has moderate recreational resources related to swimming and substantial cultural resources related to historic sites and taro cultivation. The Applicant represents that it will use BMPs during grading activities to prevent contamination of the downstream environment of Kawaipapa Stream.

## ADEQUACY OF PUBLIC FACILITIES AND UTILITIES

### Roadways

39. Hāna Highway is a two-way, two-lane State highway that serves as the main transportation arterial with rural collector road status for the Hāna region. Access to the Hāna Landfill is provided via Waikalua Road, a paved roadway over compacted subgrade. The existing landfill operations will not require any additional public improvements to roadways in the area.

### Water

40. There is no County water servicing the landfill. A 2-inch waterline runs along the southern portion of Waikalua Road, along the northern rim of Hāna Bay. The 2-inch line terminates at a point approximately 750 feet south of the Property. The existing landfill operations will not require any additional public improvements to water systems in the area.

### Drainage

41. Storm water drainage in the vicinity of the landfill generally follows natural contours and sheetflows into streams and gullies, discharging into coastal waters. Within the limits of the landfill, extensive grass and landscaping cover the lands surrounding the active area of the landfill. The vegetative cover and porous cinder soils generally provide the necessary capacity to absorb runoff in times of heavy rains. The active area of the landfill operates above the surrounding grade. As such,

offsite runoff from a 25-year, 24-hour storm to the active area is prevented by natural contours. Under current conditions, the active area of the landfill is graded with a soil cover in a series of terraces, sloped outward to control runoff resulting from direct rainfall. The terraces are sloped to direct runoff downslope onto the vegetative cover which surrounds the active landfill area. The runoff needs to be collected and contained so that discharges do not violate the provisions of the Clean Water Act. The proposed drainage improvements, in the form of a 100' x 100' runoff detention basin, are designed to collect and contain runoff from the active landfill area to provide appropriate storm water management.

42. The detention basin will be cut to a depth of approximately ten feet below the existing grade. It is projected that the cut and grading will involve approximately 3,700 cubic yards of earthen material. Runoff from the active landfill area will be diverted to the basin via a system of shallow ditches and earthen berms. Because the active landfill area is relocated on a regular basis, the ditches and berms will be relocated as necessary to adequately convey the required runoff volumes. An 18-inch, 30-foot-long corrugated metal pipe is planned to convey runoff beneath the perimeter berm and discharge it into the basin.

43. The Applicant represents that BMPs will be instituted to ensure that grading activities do not result in adverse impacts to the surrounding downstream environment. Construction of the basin will be completed by the Applicant's staff or

contracted through a competitive bid process. It is anticipated that construction would take approximately ten weeks at an estimated cost of approximately \$80,000.

#### Wastewater

44. There is no County wastewater collection or treatment facilities currently servicing the Hāna region. Individual properties are generally serviced by individual wastewater systems, including septic tanks, cesspools, and packaged treatment plants. The existing landfill operations will not require any additional public improvements to wastewater systems in the area.

#### Solid Waste

45. No solid waste will be generated during the proposed grading activities. Excavated material for the detention basin will be used for daily cover of the landfill.

#### Schools

46. The State Department of Education operates two public schools in the Hāna region, Hāna High and Elementary Schools and Ke`anae School. Hāna High and Elementary Schools are located approximately one mile to the northwest of the landfill. The existing landfill operations will not adversely impact school facilities.

#### Police and Fire Protection Services

47. The Maui Police Department, Hāna Patrol Division, covers the area from Kailua to Kaupō, and is based out of the Hāna substation located near the

intersection of Hāna Highway and Uakea Road, southeast of the landfill. The existing landfill operations will not adversely impact police services.

48. Fire prevention, suppression, and protection services are provided by the County of Maui Fire Department. The department maintains a fire station in Hāna which is located on the same property as the police substation. The existing landfill operations will not adversely impact fire protection services.

#### Medical Services

49. The Hāna Health Clinic, located a half mile west of the landfill, provides general health care, dental services, and 24-hour acute care services. The existing landfill operations will not adversely impact medical services.

#### Electrical and Telephone Services

50. Electrical and telephone services are located onsite and are provided by Maui Electric Company and Hawaiian Telcom, respectively. The existing landfill operations will not adversely impact electrical and telephone services.

### CONCLUSIONS OF LAW

1. The LUC has jurisdiction over this matter pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR.

2. Based upon the record of the proceedings before the Planning Commission, and pursuant to section 205-6, HRS, and sections 15-15-95 and 15-15-96, HAR, the LUC finds that the recommendation of the Planning Commission to approve

a State Special Use Permit for the Property, consisting of an approximately 14.615-acre portion of the existing 29.05-acre Hāna Landfill and an approximately 5.39-acre encroachment area, identified as Tax Map Key: 1-3-06: por. 7 and por. 12, generally meets the guidelines for determining an “unusual and reasonable use” within the State Land Use Agricultural District.

3. The use shall not be contrary to the objectives sought to be accomplished by chapters 205 and 205A, HRS, and the rules of the LUC. The continued operation of the landfill at the existing and encroachment area would maintain a service that the County has been providing to Maui since 1969 and will ensure that homeowners and businesses are provided with a place to dispose of their waste. Compliance with applicable regulatory requirements will be rendered in the continued operation of the landfill.

4. Based upon the record of the proceedings before the Planning Commission, the desired use would not adversely affect surrounding property. The landfill is located in an area that is surrounded by vacant lands. The closest residences are situated approximately a quarter mile to the west and south.

5. Based upon the record of the proceedings before the Planning Commission, the existing landfill operations will not unreasonably burden public agencies to provide roads and streets, wastewater, water, school, and recreational improvements, police and fire protection, and emergency medical services. No



additional public improvements to these facilities and services will be necessary.

Drainage system improvements will need to be carried out in compliance with the provisions of the Clean Water Act.

6. Based upon the record of the proceedings before the Planning Commission, the preponderance of the evidence established that unusual conditions, trends, and needs have arisen since the district boundaries and rules were established. The landfill operations have been in existence since 1969 without a State Special Use Permit. The proposed action is required to correct the encroachment of the landfill and to entitle the landfill grounds under a State Special Use Permit pursuant to chapter 205, HRS. Without this permit and other land use entitlements, the Applicant has not been able to obtain an operating permit from the DOH, which would allow the Applicant to do, among other things, a recycling facility to divert waste from landfill disposal.

7. Based upon the record of the proceedings before the Planning Commission, the land upon which the proposed use is sought is unsuited for the uses permitted within the district. Lava flows underlie the Property. The flows are a mass of hard, glassy, sharp pieces of lava, making the land difficult to till and unsuitable for cultivation.

8. Any of the proposed findings of fact or conclusions of law submitted by any of the parties not already ruled on by the LUC by adoption or rejected by clearly contrary findings of fact or conclusions of law are hereby denied and rejected.

Any conclusion of law that is or should be a finding a fact is to be taken as such notwithstanding its denomination as a conclusion of law; any finding of fact that is or should be a conclusion of law is to be taken as such notwithstanding its denomination as a finding of fact.

### DECISION AND ORDER

Having duly considered the complete record in this matter, the oral arguments presented by the parties in this proceeding, the LUC, through a motion having been duly made at a meeting conducted on July 16, 2009, in Honolulu, Hawai`i, and the motion having received the affirmative votes required by section 15-15-13, HAR, and there being good cause for the motion, hereby APPROVES the recommendation of the Planning Commission approving a State Special Use Permit for the Property, consisting of an approximately 14.615-acre portion of the existing 29.05-acre Hāna Landfill and an approximately 5.39-acre encroachment area, situated within the State Land Use Agricultural District at Hāna, Maui, Hawai`i, identified as TMK: 1-3-06: por. 7 and por. 12, and approximately shown on Exhibit "A" attached hereto and incorporated by reference herein, subject to the following conditions:

1. That the State Land Use Commission Special Use Permit, and County Special Use Permit shall be valid until February 28, 2018, subject to further extensions by the Land Use Commission and/or the Maui Planning Commission as required by each permit accordingly, upon a timely request for extension filed at least

one-hundred twenty (120) days prior to its expiration. The Maui Planning Commission shall make a recommendation to the Land Use Commission and may require a public hearing on the time extension.

2. That the conditions of this State Land Use Commission Special Use Permit shall be enforced pursuant to Sections 205-12 and 205-13, Hawai'i Revised Statutes. The County Special Use Permit conditions will be enforced pursuant to the provisions of Chapter 19.530, Section 19.530.030 of the Maui County Code, as amended, 1980. Failure to comply with one or more of the conditions herein shall result in a notice of violation issued by the appropriate enforcement agency, notifying the permit holder of the violation and providing the permit holder no more than sixty (60) days to cure the violation. If the permit holder fails to cure the violation within sixty (60) days of said notice, the appropriate enforcement agency shall issue an order which may require one or more of the following: that the violative activity cease; that the violative development be removed; that a civil fine be paid not to exceed One Thousand Dollars (\$1,000.00) per violation; and that a civil fine not to exceed Five Thousand Dollars (\$5,000.00) shall be issued if violation not cured within six (6) months of the issuance of the order. The order shall become final thirty (30) days after the date of its mailing or hand-delivery, unless written request for a hearing is mailed or delivered to the Department of Planning ("Department") within said thirty (30) days. Upon receipt of a request for a hearing, the Department shall specify a time and place for the permit

holder to appear and be heard. The hearing shall be conducted by the Planning Director or the Director's designee in accordance with the provisions of Chapter 91, HRS, as amended.

3. That the subject State Land Use Commission Special Use Permit and County Special Use Permit shall not be transferred without the prior written approval of the Land Use Commission and/or the Maui Planning Commission as required by permit requirements accordingly. The appropriate Planning Commission shall make a recommendation to the Land Use Commission as necessary. However, in the event that a contested case hearing preceded issuance of said State Land Use Commission Special Use Permit, a public hearing shall be held by the appropriate Planning Commission upon due published notice, including actual written notice to the last known addresses of parties to said contested case and their counsel.

4. That full compliance with all applicable governmental permits and requirements shall be rendered.

5. That the Applicant shall timely provide without any prior notice, annual reports to the Land Use Commission and the Department in connection with the status of the Project and the Applicant's progress in complying with the conditions imposed herein. The annual report shall be submitted in a form prescribed by the Executive Officer of the Commission.

6. That the Applicant shall develop the property in substantial compliance with the representations made to the Land Use Commission in obtaining the State Land Use Commission Special Use Permit and the Maui Planning Commission in obtaining the County Special Use Permit. Failure to so develop the Property may result in the revocation of the permit.

7. That the Applicant shall begin construction of the landfill storm water drainage retention basin within three (3) years from issuance of the Land Use Commission's decision and order. Construction shall include any improvements necessary to operate the landfill pursuant to all applicable laws and regulations.

8. That the Applicant shall take appropriate mitigative measures to minimize erosion, prevent cement products, oil, fuel, and other toxic substances associated with heavy machinery from spilling or leaching into the ground.

9. That the Applicant shall comply with Department of Health Ambient Air Quality Standards, Hawai'i Administrative Rules, Title 11, Chapter 59 and Air Pollution Control, HAR 11-60.

10. That the Applicant shall comply with the EPA's New Source Performance Standards.

11. That provisions shall be enacted to ensure emergency access to the sanitary landfill in case of fire or any other disaster.

12. That the Applicant shall utilize non-drinking water, to the extent possible, for grading, dust control, and irrigation of the landfill.
13. That the Applicant shall ensure that windblown debris around the perimeter of the landfill, particularly within areas visible from the public right of way, be removed in a timely manner.
14. That full compliance with the requirements of the State's Department of Health for sanitary landfill operation shall be rendered.
15. That the Applicant inform the Department of Public Works of HAC's safety concerns, and further that the Applicant shall make its best effort to insure daily operations are conducted in a safe manner. The Applicant shall undertake an engineering slope and soil stability analysis prior to construction within the three (3) year period.
16. That a cultural assessment be conducted to address impacts to cultural resources resulting from the excavation of cinder ash and that the Office of Hawaiian Affairs shall be consulted prior to construction within the three (3) year period.
17. That the Applicant execute a legal document with the State of Hawai'i and the County of Maui regarding the removal of cinder ash from the Ka'elekū area.

18. That mitigation measures be taken to address the visual height of the landfill by landscaping or other methods such as: waste diversion, recycling, etc. within the ten (10) year permit period.

19. That a recycling program begin immediately after permits are issued and/or the Department of Health grants approval. The recycling program may consider, but not be limited to, glass, aluminum, plastics, batteries, newspapers, cardboard, appliances, and oil.

20. That the Applicant increase its groundwater monitoring at the landfill from semi-annually to quarterly.

21. That the Applicant shall periodically monitor the Property for the presence of miconia plants and eradicate any individuals found while they are still immature.

22. That the Applicant shall file a boundary interpretation request with the LUC staff to determine the location of the Agricultural and Conservation District boundary relative to Waste Area No. 2, as identified on the survey map dated September 8, 2007, within 30 days following the issuance of the Decision and Order granting the Application. The boundary interpretation request shall be accompanied by a metes and bounds survey prepared by a licensed professional land surveyor.

23. That the Applicant shall be prohibited from utilizing any Conservation District lands that may be present in Waste Area No. 2, as determined by

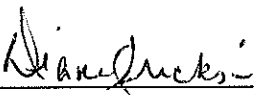
the boundary interpretation prepared by the LUC staff, for the purposes of municipal solid waste disposal in connection with the Hāna Landfill.

ADOPTION OF ORDER

The undersigned Commissioners, being familiar with the record and proceedings, hereby adopt and approve the foregoing ORDER this 27th day of August, 2009. This ORDER may be executed in counterparts. This ORDER and its ADOPTION shall take effect upon the date this ORDER is certified and filed by this Commission.

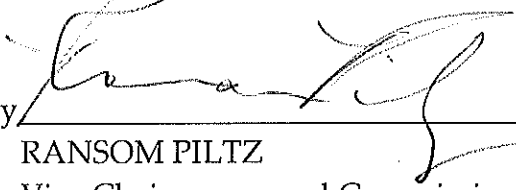
Done at Waikoloa, Hawai'i, this 27th day of August, 2009, per motion on July 16, 2009.

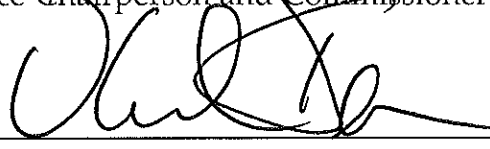
APPROVED AS TO FORM

  
Deputy Attorney General

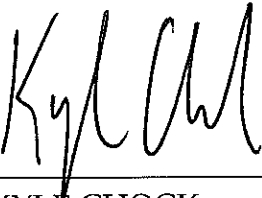
LAND USE COMMISSION  
STATE OF HAWAII

By   
DUANE KANUHA  
Chairperson and Commissioner

By   
RANSOM PILTZ  
Vice-Chairperson and Commissioner

By   
VLADIMIR PAUL DEVENS  
Vice-Chairperson and Commissioner

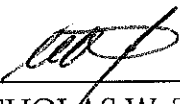


By   
KYLE CHOCK  
Commissioner

By ABSENT  
THOMAS CONTRADES  
Commissioner


By ABSENT  
LISA JUDGE  
Commissioner

By ABSENT  
NORMAND LEZY  
Commissioner

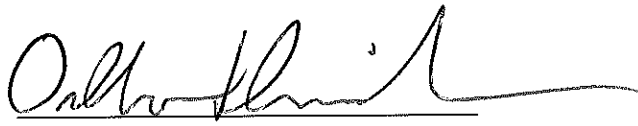
By   
NICHOLAS W. TEVES, JR.  
Commissioner

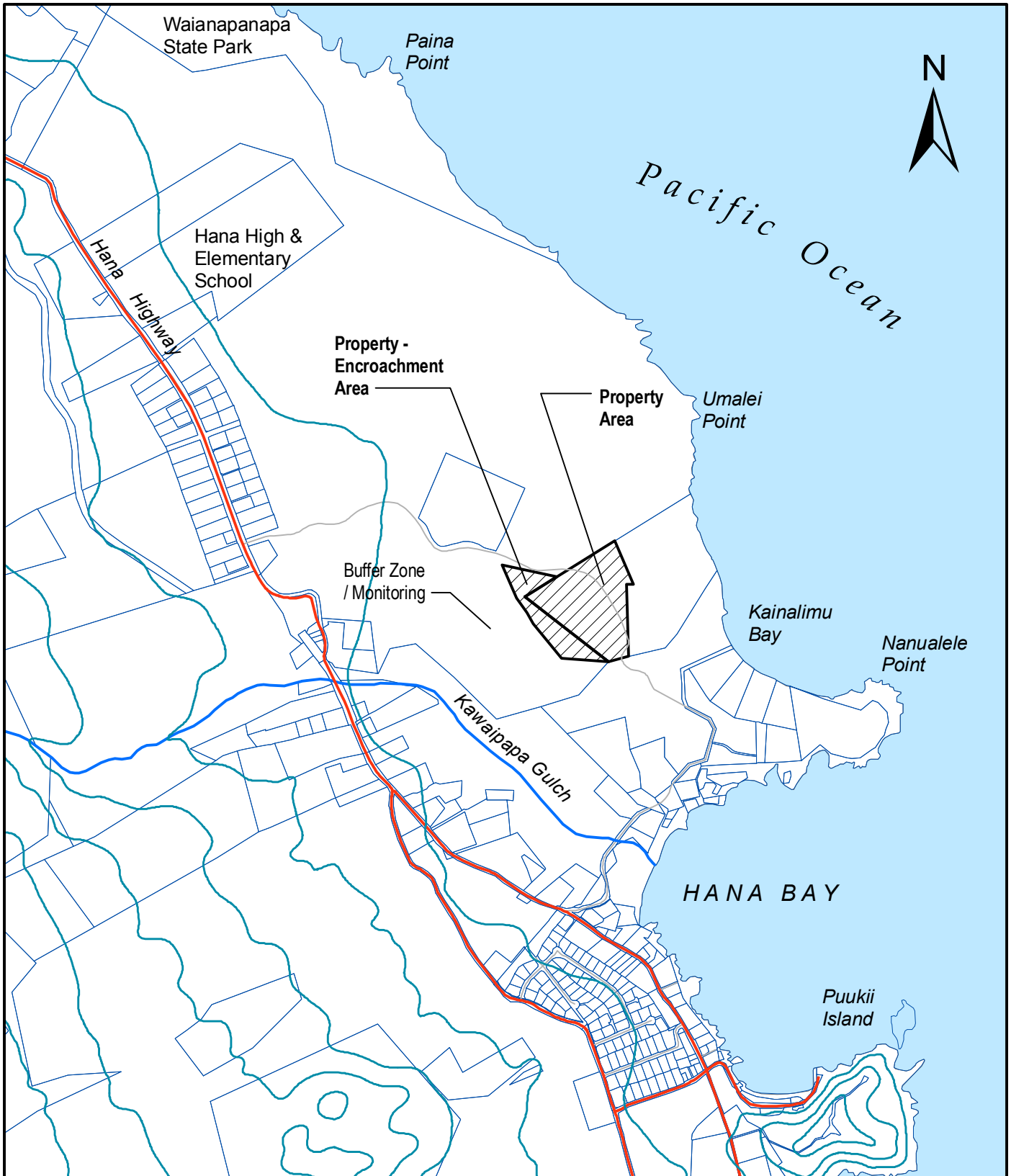
Filed and effective on:

August 27, 2009

By   
REUBEN S.F. WONG  
Commissioner

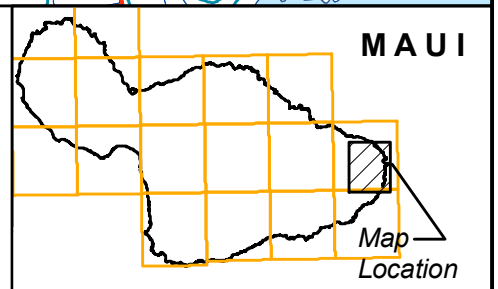
Certified by:

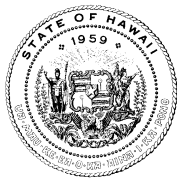
  
ORLANDO DAVIDSON  
Executive Officer



**SP08-402 DEPARTMENT OF ENVIRONMENTAL  
MANAGEMENT, COUNTY OF MAUI**

Location Map  
 Tax Map Key: 1-3-06: portion 07 and portion 12  
 Hana, Maui, Hawaii  
 Scale: 1: 15,840  
**EXHIBIT "A"**





BEFORE THE LAND USE COMMISSION  
OF THE STATE OF HAWAI`I

In The Matter Of The Application Of The ) DOCKET NO. SP08-402  
)  
DEPARTMENT OF ENVIRONMENTAL ) CERTIFICATE OF SERVICE  
MANAGEMENT, COUNTY OF MAUI )  
)  
For A State Special Use Permit For An )  
Approximately 14.615-Acre Portion Of The )  
Existing 29.05-Acre Hāna Landfill And An )  
Approximately 5.39-Acre Encroachment )  
Area Situated Within The State Land Use )  
Agricultural District At Hāna, Maui, )  
Hawai`i, Tax Map Key: 1-3-06: Por. 7 And )  
Por. 12 )  
\_\_\_\_\_ )

CERTIFICATE OF SERVICE

I hereby certify that a copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECISION AND ORDER APPROVING THE RECOMMENDATION OF THE COUNTY OF MAUI PLANNING COMMISSION TO APPROVE THE STATE SPECIAL USE PERMIT APPLICATION was served upon the following by either hand delivery or depositing the same in the U. S. Postal Service by regular or certified mail as noted:

HAND DELIVERED: ABBEY SETH MAYER, Director  
State Office of Planning  
P. O. Box 2359  
Honolulu, Hawaii 96804-2359

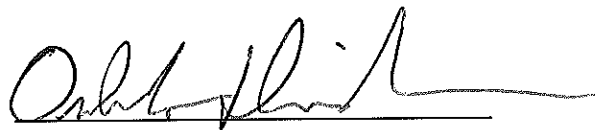
REGULAR  
MAIL: BRYAN C. YEE, Esq.  
Deputy Attorney General  
425 Queen Street  
Honolulu, Hawaii 96813

REGULAR  
MAIL: JEFFREY HUNT, Director of Planning  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

REGULAR  
MAIL: BRIAN MOTO, Esq.  
MICHAEL HOPPER, Esq.  
Corporation Counsel  
County of Maui  
250 South High Street  
Wailuku, Hawaii 96793

CERTIFIED  
MAIL: CHERYL K. OKUMA, Esq.  
Director of Environmental Management  
County of Maui  
2200 Main Street, Suite 175  
Wailuku, Hawaii 96793

Dated: Honolulu, Hawaii, September 1, 2009.



ORLANDO DAVIDSON  
Executive Officer